

DRAFT

STATE OF WASHINGTON DEPARTMENT OF NATURAL RESOURCES

HARVESTING SERVICES CONTRACT

AGREEMENT NO. 30-081580

SALE NAME: Preacher Sorts

THE STATE OF WASHINGTON DEPARTMENT OF NATURAL RESOURCES, HEREINAFTER ACTING SOLELY, IN ITS PROPRIETARY CAPACITY, STATE, AND [Contractor Name here], CONTRACTOR, AGREE AS FOLLOWS:

Section G: General Terms

G-001 Definitions: The following definitions apply throughout this contract.

Contract Administrator: Region Manager's designee who is responsible for assuring that the contractual obligations of the Purchaser and Contractor are met.

Contractor: State-selected harvester who is responsible to perform all duties as required by the Harvesting Services Contract, including but not limited to timber harvesting, road construction, debris removal and piling, hauling and delivery of logs for weighing and/or scaling, to the Purchasers of the timber sales Sorts.

Delivery: Occurs when logs meeting the sorting specifications arrive at the Purchasers destination, as described in the contract.

Harvesting: A general term, referring to the Contractor's various obligations under the Harvesting Services Contract.

Harvesting Services Contract: Contract between the Contractor and the State, which sets forth the procedures and obligations of the Contractor for completing the harvesting of timber, and the delivery of various log sorts to the State's purchasers, and the payment obligations of the State, The Harvesting Services Contract will include a Road Plan for any road construction or reconstruction, where applicable.

Log Sale and Purchase Contract: Purchase Agreement between the State and Purchaser(s) of particular log sorts from the timber sale.

Purchaser: The company or individual that has entered a Log Sale Contract with the State for individual log sorts from the timber sale area. The Contractor must deliver the designated log sorts to this company or individual. Contractor will likely be delivering different log sorts to different purchasers under the Harvesting Services Contract.

Road Construction Services: Includes building new and maintaining existing forest roads and associated work that may be optional or required as described in the Road Plan.

State: The Washington State Department of Natural Resources, landowner and seller of logs from the timber sale area. The State is represented by the Region Manager as designated on the contract signature page. Contractual obligations to the State are enforced by the Region Manager or the designated Contract Administrator.

G-015 Harvest Area and Location

The harvest area consists of approximately 125 acres located on part(s) of Section(s) 3 and 4, Township 22 North, Range 4W, in Mason County as shown on the attached timber sale map.

G-021 Inspection By Contractor

Contractor hereby warrants to the State that they have had an opportunity to fully inspect the sale area and the forest products to be harvested. Contractor further warrants to the State that they enter this contract based solely upon their own judgment of the harvest and road work, and condition of the forest products, formed after their own examination and inspection of both the timber sale area and the forest products to be harvested. Contractor also warrants to the State that they enter this contract without any reliance upon the volume estimates, acreage estimates, appraisals, pre-bid documentation, or any other representations by the State.

G-022 Sorting Specifications

Contractor is responsible for sorting logs to the specifications listed below and hauling to the appropriate designated locations. Contractor is responsible for determining the highest value of each tree felled and the highest value destination of each log manufactured. The State's Contract Administrator will provide direction and guidance to Contractor with respect to highest value.

All merchantable logs, except poles, produced and sold under this contract will be manufactured by Contractor to suitable lengths for meeting the Purchaser's sorts and preferred log lengths for all sorts, with a minimum length of 12 feet, unless otherwise directed by the contract administrator.

Contractor shall deliver log sorts to the Purchaser(s) location that meet the following quoted specifications:

Agreement no.	Sort #	Species Diameter	Scaling Rule	Preferred Log Lengths	Destination	Haul Miles
30-083345	1	DF Distribution Pole 35' min – 55' max	WS			A: [miles] C: 1
30-083346	2	DF Hiline 8"+ DIB to 30"LE 28' average length	WS			A: [miles] C: 1
30-083347	3	DF Sawlog 8"+DIB to 22"LE 30' average length	WS			A: [miles] C: 1
30-083348	4	DF Oversize Sawlog 23"+ DIB 30' average length	WS			A: [miles] C: 1
30-083349	5	DF Sawlog 5"-7"DIB	WS			A: [miles] C: 1
30-083350	6	WH/True Fir Sawlog 6"+DIB 30' average length	WS			A: [miles] C: 1
30-083351	7	RC Poles 35 ft minimum	WS			A: [miles] C: 1
30-083352	8	RC Sawlog 5"+DIB 26' average length	WS			A: [miles] C: 1
30-083353	9	Alder/Maple Sawlog 6"+DIB 24" average length	WS			A: [miles] C: 1
30-083354	10	Utility All species	WS			A: [miles] C: 1
30-084163	11	DF Transmission Pole 60' min – 125' max	WS			A: [miles] C: 1

“WS” means that west side scaling rules apply. Minimum trim is six inches per scaling segment for east side scaling rules and ten inches per scaling segment for west side scaling rules.

Logs delivered by Contractor that do not meet the receiving Purchaser's log sort and merchantability requirements as described above that have been pre-approved for delivery by the Contract Administrator shall not be considered mis-sorts.

G-024 Manufacturing Standards

Contractor will manufacture and deliver peeler and saw logs with the following minimum specifications:

- a. Sweep will be limited to within the bole of the log as measured using a tape

- stretched between the centers of each end of the log.
- b. Logs in the peeler sorts shall be chuckable with no more than a 2 inch diameter area of rot within a 5 inch diameter circle located at the center of either end of the log.
 - c. Limbs and knots shall be cut flush, with no more than 15 percent of a log having limbs or knots over 2 inches in diameter extending more than 2 inches above the surface of the log.
 - d. East of the crest of the Cascade Mountains, ponderosa pine will not be manufactured into merchantable saw logs if blue stain is present.

G-025 Schedules

The following attached schedules are hereby incorporated by reference:

Schedule A: Shovel Logging Specifications

G-027 Log Delivery Schedule and Conditions

- a. Contractor shall deliver logs to Purchaser's designated delivery location per G-022 clause. If a log delivery location is changed during this contract, the Contract Administrator shall notify the Contractor. Once notified, the Contractor shall deliver logs to the new location.
- b. The Contractor may deliver logs to the Purchaser's delivery location during the Purchaser's working hours, or at least between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, except, scheduled closures and legal holidays for the contract term as described in clause G-032, unless permission to do otherwise is agreed upon by the State.
- c. The Contractor agrees to deliver said logs on conventional or self-loading logging trucks, properly and legally loaded, bound, branded, and ticketed. Logs in loads shall not be double-ended unless approved in writing by the Contract Administrator. It is understood and agreed that the Purchaser incurs no obligation to accept improperly or illegally loaded trucks in its facility. Any truck so loaded may be directed to vacate the yard and shall remain the responsibility of the Contractor to make the load conform to legal requirements for hauling.
- d. If a receiving Purchaser plans a scheduled closure, the Contract Administrator shall notify the Contractor at least 24 hours before the scheduled closure. Depending on the length of the scheduled closure or delays in log delivery, the Contract Administrator will decide in the best interest of the State on the disposition of the affected log sort(s) or any alternate delivery schedule or location.
- e. Contractor's daily log delivery to a Purchaser's location may be limited according to the table below, provided the Contract Administrator notifies the Contractor at least 48 hours prior to the time this truck delivery limit is established.

Sort(s)	Maximum No. Loads/day
Each Sort	10

A truck delivery is all the wood hauled including sorts on super trucks, mule trains and pups brought to the delivery point by a single truck. Contractor shall notify the State's Contract Administrator If for any reason a Purchaser refuses truck deliveries.

G-032 Contract Term and Expiration Date:

To ensure the timely completion of activities under this contract, the State shall determine the starting date. The State shall notify the Contractor no later than fourteen (14) days prior to the anticipated starting date. All activities are to occur from the starting date of March 16, 2009 to the "Expiration Date" of September 15, 2009.

All obligations of the Contractor for this contract shall be discharged no later than the "Expiration Date", unless the expiration date is adjusted as provided in this contract. The Contractor shall not have any right to enter the sale area for harvesting purposes after the expiration date.

G-033 Contract Curtailment of Operations

The Contractor shall provide the State with five days advance written notice to the Contract Administrator of its intent to commence or cease any and all operations under this contract. The commencement or cessation of operations must be approved by the Contract Administrator. Failure to comply will be considered a breach.

G-041 Contract Term Adjustment

A Contract Term Adjustment may be considered and based on actual time lost through unforeseeable causes beyond the control and without fault or negligence of the Contractor, including, but not restricted to, acts of the State, closures by government regulatory agencies, mill closures, fires, vandals, and unusually severe weather conditions, provided that the Contractor shall, within seven (7) calendar days of the initiation of such delay, notify the State, in writing, of the cause of delay, upon which notification the State shall ascertain the facts and extent of the delay and notify the Contractor in writing within a reasonable time of its decision regarding contract adjustment.

G-052 Contract Term Extension – Payment

An extension of operating authority time may be granted at the discretion of the State upon written request thirty (30) days prior to the termination date and upon the terms and conditions as specified by the State. Contract extensions may not exceed thirty (30) days unless otherwise agreed to by State and Contractor. Extension requests within the last thirty (30) days of the contract may be considered if the extension would be in the

best interest of the State. The extension, if granted, will be contingent upon the payment of an extension fee to the State, by the Contractor, in the amount of \$100.00 per day of extension.

G-054 Contract Termination

The State may terminate this contract in whole or in part by giving fifteen (15) days written notice to the Contractor when it is in the best interests of the State. If this contract is so terminated, the State shall only be liable to make payments to the Contractor for the sum of the estimated expenditures for road construction, felling, bucking, yarding and decking products so processed but not removed from the sale area due to termination action. Contractor may not seek any other damages from the State for termination of this harvesting agreement.

G-061 Exclusion of Warranties

The following specific matters ARE NOT WARRANTED, and are EXCLUDED from this transaction:

- a. The **CONDITION** of the site or forest products. Any descriptions of the site or forest products in the notice of sale, other pre-contractual documents, or the Harvesting Services Contract are provided solely for administrative and identification purposes.
- b. The **ACREAGE** contained within any sale area. Any acreage descriptions appearing in the notice of sale, other pre-contractual documents, or the Harvesting Services Contract are estimates only, provided solely for administrative and identification purposes.
- c. The **VOLUME, WEIGHT, QUALITY, or GRADE** of the forest products to be harvested. The descriptions of the forest products to be harvested are estimates only, made solely for administrative and identification purposes.
- d. The **CORRECTNESS OF ANY SOIL OR SURFACE CONDITIONS, PRE-SALE CONSTRUCTION APPRAISALS, INVESTIGATIONS, AND ALL OTHER PRE-BID DOCUMENTS PREPARED BY OR FOR THE STATE**. These documents have been prepared for informational purposes, but the information contained therein is not warranted. Contractors must make their own assessments of the site.
- e. **THAT THE SALE AREA IS FREE FROM THREATENED OR ENDANGERED SPECIES** or their habitat. The State is not responsible for any interference with forestry operations that result from the presence of any threatened or endangered species, or the presence of their habitat, within the sale area.
- f. **THAT THE FORESTRY OPERATIONS** to be performed under this contract **WILL BE FREE FROM REGULATORY ACTIONS** by governmental agencies. The State is not responsible for actions to enforce regulatory laws, such as the Washington Forest Practices Act (chapter 76.09 RCW), taken by the Department of

Natural Resources or any other agency that may affect the operability of this timber sale.

- g. Items contained in any other documents prepared for or by the State.

G-062 HCP-Clause language

The Department has entered into a Habitat Conservation Plan (HCP) with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (the Services) to address state trust land management issues relating to compliance with the Federal Endangered Species Act. The activities to be carried out under this contract are located within the Department's HCP area and are subject to the terms and conditions of the HCP and the Services' Incidental Take Permit PRT- 812521 and ITP 1168 (collectively referred to as ITP), or as amended hereafter by the Services. The ITP authorizes the incidental take of certain federally listed threatened and endangered species, as specified in the ITP conditions. All HCP materials, including the ITP, are available for review at the Department's Region Offices and the administrative headquarters in Olympia, Washington.

By signing this contract, Contractor agrees to comply with the terms and conditions of the ITP and the HCP, which shall become terms of this contract. The Department agrees to authorize the lawful activities of the Contractor carried out pursuant to this contract, PROVIDED the Contractor remains in compliance with the terms and conditions of both the HCP and ITP. The requirements set forth in this contract are intended to comply with the terms and conditions of the HCP and ITP. Accordingly, non-compliance with the terms and conditions of the HCP and ITP will render the authorization provided in this paragraph void, be deemed a breach of the contract and may subject the Contractor to liability for violation of the Endangered Species Act.

Any modifications to the contract shall be proposed in writing by the Contractor, shall continue to meet the terms and conditions of the HCP and ITP, and shall require the prior written approval of the Region Manager before taking effect.

G-063 Incidental Take Permit

- a. Contractor shall immediately notify the Contract Administrator of new locations of permit species covered by the Incidental Take Permits (ITPs) that are discovered within the area covered by the State's Habitat Conservation Plan (HCP), including, but not limited to: locations of occupied murrelet habitat; spotted owl nest sites; wolves; grizzly bears; nests, communal roosts, or feeding concentrations of bald eagles; peregrine falcon nests; Columbian white-tailed deer; Aleutian Canada geese; Oregon silverspot butterflies; and additional stream reaches found to contain bull trout. Contractor is required to notify the Contract Administrator upon discovery of any fish species found in streams or bodies of water classified as non-fish bearing. In all circumstances, notification must occur within a 24 hour time period.
- b. Upon locating any live, dead, injured, or sick specimens of any permit species covered by the ITPs, Contractor shall immediately notify the Contract

Administrator. Contractor shall notify the Contract Administrator, if there is any doubt as to the identification of a discovered permit species. Contractor may be required to take certain actions to help the Contract Administrator safeguard the well being of any live, injured or sick specimens of any permit species discovered, until the Contract Administrator can determine the proper disposition of such specimens. The Contract Administrator will explain any such requirements to Contractor during the Pre-Work Conference. In all circumstances, notification must occur within a 24 hour time period.

- c. Contractor shall refer to a specific ITP number, PRT-812521 or ITP 1168 (copies which are located in the region office) in all correspondence and reports concerning permit activities.
- d. Provisions and requirements of the ITPs shall be clearly presented and explained to Contractor by Contract Administrator during the Pre-Work Conference as per contract clause G-330. All applicable provisions of the ITPs and this schedule must be presented and clearly explained by Contractor to all authorized officers, employees, contractors, or agents of Purchaser conducting authorized activities in the timber sale area. Any questions Contractor may have about the ITPs should be directed to the Contract Administrator.

G-067 Governmental Regulatory Actions

- a. Regulatory Risk

Except as provided in this clause, Contractor assumes all risks associated with governmental regulatory actions, including actions taken pursuant to the Forest Practices Act, Ch. 76.09 RCW, the Endangered Species Act, 16 U.S.C 1531-1544 and any Habitat Conservation Plan between the Department of Natural Resources and the U.S. Fish and Wildlife Service or any other agency now in place and as may be amended, or hereafter created, that may affect the operability of the timber sale.

- b. Increased Costs

Contractor shall be responsible for any increased operational costs arising from any applicable foreign or domestic governmental regulation or order that does not cause contract performance to become commercially impracticable or that does not substantially frustrate the purpose of the contract. If impracticability or frustration results from Contractor's failure to comply with this contract or from Contractor's acts or omissions, Contractor shall remain responsible for fulfilling contract obligations notwithstanding the impracticability or frustration.

G-068 Operational Permits

Contractor is responsible for obtaining any permits not already obtained by the State that relate to Contractor's operation. Forest Practice Application and Hydraulic Project Approval permits obtained by the State shall be transferred to Contractor. Contractor is responsible for all permits, amendments and renewals.

G-070 Limitation on Damage

In the event of a breach of any provision of this contract by the State, the exclusive remedy available to the Contractor will be limited to a return of the Performance Security, and payment for improvements and other services rendered by the Contractor, which were required by the Harvesting Services Contract. The State shall not be liable for any damages, whether direct, incidental, or consequential.

G-092 Harvest Area Boundary Adjustment

The State may make adjustments in the harvest area boundaries, or may mark timber outside such boundaries. The cumulative changes to the sale area during the term of the contract shall not exceed more than five (5) percent of the original sale area. Such adjustments or marking will be accomplished by the Contract Administrator. The Contractor must remove and deliver all material so designated, prior to the expiration date of the contract. All contract services within such boundary adjustments or so marked shall be paid for at contract rates.

G-111 Title

All rights, title, and interest in and to any timber shall belong to the State until delivered, at which time the appropriate Purchaser assumes title.

G-120 Responsibility for Work

All work, equipment, personnel, and materials necessary to perform the Harvesting Services Contract shall be the responsibility of Contractor.

G-121 Exceptions

Exceptions to Contractor's responsibility in clause G-120 shall be limited exclusively to the circumstances described in this clause. These exceptions shall not apply where damages occur due to Contractor's failure to take reasonable precautions or to exercise sound forest engineering and construction practices.

The State shall bear the cost to repair any existing roadway or section of required road completed to the point that an authorization to haul has been issued where such damage was not caused by Contractor, its employees, agents, or invitees, including independent contractors. Contractor shall accomplish repairs promptly as required by the State at the rates set forth in the equipment rate schedule on file at the Region office or Engineering Division in Olympia. The State may elect to accomplish repairs by means of State provided resources.

Nothing contained in clauses G-120 (Responsibility for Work) and G-130 (Exceptions) shall be construed as relieving Contractor of responsibility for, or damage resulting from, Contractor's operations or negligence, nor shall Contractor be relieved from full responsibility for making good any defective work or materials.

G-123 Operating Authority

The State has arranged for the Contractor to have full and free license and authority to enter upon said lands with his agents and employees and do all things necessary, within the limitations herein set forth, in harvesting said timber as described in this contract.

G-124 Contractor Not an Employee of State

Contractor and his or her employees or agents performing under this contract are not employees of the Purchaser(s) or State. The Contractor will not hold itself out as nor claim to be an officer or employee of the Purchaser(s) or State by reason hereof, nor will the Contractor make any claim or right, privilege or benefits which would accrue to an employee under chapter 41.06 RCW or Chapter 28B.16 RCW.

G-125 State Expectations Regarding Contractor Disputes With Subcontractors or Material Providers

Should Contractor require subcontractors or material providers in order to complete their obligations, and should Contractor and its subcontractors or materials providers develop disputes regarding their completion of obligations under this contract, Contractor shall resolve any such disputes in a timely and efficient manner that does not involve or adversely affect either the State or its Purchasers.

G-141 Indemnity

To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless State, agencies of State and all officials, agents and employees of State, from and against all claims arising out of or resulting from the performance of the contract. "Claim" as used in this contract means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorneys' fees, attributable for bodily injury, sickness, disease or death, or injury to or destruction of tangible property including loss of use resulting therefrom. Contractors' obligations to indemnify, defend, and hold harmless includes any claim by Contractors' agents, employees, representatives, or any subcontractor or its employees. Contractor expressly agrees to indemnify, defend, and hold harmless State for any claim arising out of or incident to Contractors' or any subcontractors' performance or failure to perform the contract. Contractors' obligation to indemnify, defend, and hold harmless State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials. Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless State and its agencies, officials, agents or employees.

In addition to any other remedy authorized by law, the State may retain as much of the performance security, or any money or credits due Contractor necessary to assure indemnification.

G-150 Insurance

Contractor shall, at its cost and expense, buy and maintain insurance of the types and amounts listed below. Failure to buy and maintain the required insurance may result in a breach and/or termination of the contract at State's option. State may also suspend Contractor operations until required insurance has been secured.

Companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports should issue all insurance and surety bonds. Any exception shall be reviewed and approved by the department's risk manager before the insurance coverage is accepted. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.

The State of Washington, Department of Natural Resources [South Puget Sound](#) Region office shall be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accord with the following specifications:

1. Insurers subject to Chapter 48.18 RCW (admitted and regulated by the Insurance Commissioner): The insurer shall give the State 45 days advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the State shall be given 10 days advance notice of cancellation.
2. Insurers subject to Chapter 48.15 RCW (surplus lines): The State shall be given 20 days advance notice of cancellation. If cancellation is due to non-payment of premium, the State shall be given 10 days advance notice of cancellation.

Before starting work, Contractor shall furnish State with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements specified in the contract. The Contractor shall obtain insurance coverage prior to operations commencing and continually maintain it in full force until all contract obligations have been satisfied or an operating release has been signed by the State.

Contractor shall include all subcontractors as insured under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each subcontractor. Subcontractor(s) must comply fully with all insurance requirements stated herein. Failure of subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

The State of Washington, Department of Natural Resources, its elected and appointed officials, agents and employees shall be named as an additional insured on all general liability, excess, umbrella, and property insurance policies.

All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by State. Contractor waives all rights against State for recovery of damages to the extent these damages are covered by general liability or umbrella insurance maintained pursuant to this contract.

If Contractor is self-insured, evidence of its status as a self-insured entity shall be

provided to State. If requested by State, Contractor must describe its financial condition and the self-insured funding mechanism.

By requiring insurance herein, State does not represent that coverage and limits will be adequate to protect Contractor and such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to State in this contract.

The limits of insurance, which may be increased as deemed necessary by State, shall not be less than as follows:

Commercial General Liability (CGL) Insurance. Contractor shall maintain general liability (CGL) insurance, and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000.00 per each occurrence. If such CGL insurance contains aggregate limits, the General Aggregate limit shall be at least twice the "each occurrence" limit. CGL insurance shall have products-completed operations aggregate limit of at least two times the "each occurrence" limit.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 (or a substitute form providing equivalent coverage). All insurance shall cover liability arising out of premises, operations, independent contractors, products completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract), and contain separation of insured (cross liability) condition.

Employer's Liability "Stop Gap" Insurance. Contractor shall buy employers liability insurance, and, if necessary, commercial umbrella liability insurance with limits not less than \$ 1,000,000.00 each accident for bodily injury by accident or \$ 1,000,000.00 each employee for bodily injury by disease.

Workers' Compensation Coverage. Contractor shall comply with all State of Washington workers' compensation statutes and regulations. Workers' compensation coverage shall be provided for all employees of Contractor and employees of any subcontractor or sub-subcontractor. Coverage shall include bodily injury (including death) by accident or disease, which exists out of or in connection with the performance of this contract. Except as prohibited by law, Contractor waives all rights of subrogation against State for recovery of damages to the extent they are covered by workers' compensation, employer's liability, commercial general liability, or commercial umbrella liability insurance.

If Contractor, contractor, subcontractor or sub-subcontractor fails to comply with all State of Washington workers' compensation statutes and regulations and State incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Contractor shall indemnify State. Indemnity shall include all fines, payment of benefits to Contractor or contractor(s) or subcontractor employees, or their heirs or legal representatives, and the cost of effecting coverage on behalf of such employees.

Business Auto Policy (BAP). Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit not less than \$

1,000,000.00 per accident. Such insurance shall cover liability arising out of "Any Auto". Business auto coverage shall be written on ISO form CA 00 01, or substitute liability form providing equivalent coverage. If necessary the policy shall be endorsed to provide contractual liability coverage and cover a "covered pollution cost or expense" as provided in the 1990 or later editions of CA 00 01. Contractor waives all rights against State for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance

G-161 Agents

The State's rights and duties will be exercised by the Region Manager. The Region Manager will notify Contractor in writing who is responsible for administering the contract. The Region Manager has sole authority to waive, modify, or amend the terms of this contract in the manner prescribed in clause G-180. No agent, employee, or representative of the State has any authority to bind the State to any affirmation, representation, or warranty concerning the forest products harvested beyond the terms of this contract.

Contractor is required to have a person on site during all operations who is authorized to receive instructions and notices from the State. Contractor shall inform the State in writing who is authorized to receive instructions and notices from the State, and any limits to this person's authority.

G-170 Assignment and Delegation

Contractor shall assign no rights or interest in this contract without prior written permission of the State. Any attempted assignment shall be void and ineffective for all purposes unless made in conformity with this paragraph. Contractor may perform any duty through a delegate, but Contractor is not thereby relieved of any duty to perform or any liability. Any assignee or delegate shall be bound by the terms of the contract in the same manner as Contractor.

G-180 Modifications

Waivers, modifications, or amendments of the terms of this contract must be in writing signed by Contractor and the State to become effective.

G-181 Contract Modification for Protection of Resources and Improvements

The Harvesting Services contract may be unilaterally terminated or modified by the State upon determination that the Contractor's operations would cause serious damage to resources or improvements, or would be significantly inconsistent with State land management plans

In the event of contract modification under this section and through no fault of Contractor operations, the Contractor shall be reimbursed for any additional operations required, provided that any work or extra protection shall be subject to prior approval of the State.

G-190 Contract Complete

This contract is the final expression of the Parties' agreement. There are no understandings, agreements, or representations, expressed or implied, which are not specified in this contract.

G-201 Notices

Notices required to be given by the State under the following clauses shall be in writing and shall be delivered to the Contractor's authorized agent or sent by certified mail to the Contractor's post office address, so that their receipt may be acknowledged by Contractor.

G-032 Commencement Date

G-092 Harvest Area Boundary Adjustment

G-181 Contract Modification for Protection of Resources and Improvements

G-211 Violation of Contract

G-221 State Suspends Operation

D-015 Delivered Mis-sorted Logs and Penalties

D-016 Damages for Delivered Mis-manufactured Logs

All other notices required to be given under this contract shall be in writing and delivered to the authorized agent or mailed to the party's post office address. Contractor agrees to notify the State of any change of address.

G-205 Prevention of Damage and Consequences of Contractor-Caused Damage

The Contractor agrees to exercise due care and caution at all times to avoid damage to all special resources including environmentally sensitive areas, research, demonstration, and cultural objects or areas. Additionally, the Contractor agrees to protect all improvements on State property affected by the work of this contract including, but not limited to, roads, culverts, bridges, ditches, fences, utility lines, and buildings.

If damages occur due to the Contractor's operations, the Contractor shall be responsible for damage or restoration costs, or other compensation measures as described in this contract. State may deduct damage or restoration costs from payments to the Contractor. This clause shall not relieve the Contractor from other applicable civil or criminal remedies provided by law.

G-211 Violation of Contract

- a. If Contractor violates any provision of this contract, the Contract Administrator, by written notice, may suspend those operations in violation. If the violation is capable of being remedied, the Contractor has fifteen (15) days after receipt of suspension notice to remedy the violation. If the violation cannot be remedied or Contractor fails to remedy the violation within fifteen (15) days after receipt of a suspension notice, the State may terminate the rights of the Contractor and collect liquidated damages under this contract associated with the breach. In the event of such a

contract termination, the State may demand all or part of the Contractor's surety in order to satisfy the State's damages.

- b. The State has the right to remedy a breach if Contractor is unable, as determined by the State, to remedy the breach, or if the Contractor has not remedied the breach within 15 days of a suspension notice. Any expense incurred by the State in remedying Contractor's breach may be charged to Contractor, or State may deduct such expenses from payments to the Contractor.
- c. If the contract expires without the Contractor having performed all their duties under this contract, Contractor's rights and obligations to harvest, deliver forest products, and perform any additional contract-related requirements are terminated. Thus, Contractor cannot remedy any breach once this contract expires. This provision shall not relieve Contractor of any financial obligations and unresolved contractual agreements, including payment to sub-contractors for work performed under this contract.

G-221 State Suspends Operations

The Contract Administrator may suspend any operation of Contractor under this contract when the State is suffering, or there is reasonable expectation the State will suffer environmental, monetary or other damage if the operation is allowed to continue.

Contractor shall be in breach of this contract if the operation continues after the suspension notice or if the operation resumes prior to approval and notice from the Contract Administrator.

Contractor may request a modification of suspension within seven (7) calendar days of the start of suspension through the dispute resolution process. If this process results in a finding that the suspension exceeded the time reasonably necessary to stop or prevent damage to the State, Contractor may request a contract term adjustment based on the number of excess days of suspension.

G-230 Trespass and Unauthorized Activity

Any cutting, removal, or damage of forest products by Contractor, its employees, agents, or invitees, including independent contractors, in a manner inconsistent with the terms of this contract or State law, is unauthorized. Such activity may subject Contractor to liability for triple the value of said forest products under RCW 79.02.320 or RCW 79.02.300 and may result in prosecution under RCW 79.02.330 or other applicable statutes.

G-241 Dispute Resolution

The following procedures apply in the event of a dispute regarding interpretation or administration of this contract and the parties agree that these procedures must be followed before a lawsuit can be initiated.

- a. In the event of a dispute, Contractor must make a written request to the Region Manager for resolution prior to seeking other relief.
- b. The Region Manager will issue a written decision on Contractor's request within five business days.
- c. Within five business days of receipt of the Region Manager's decision, the contractor may make a written request for resolution to the State Lands Steward of the Department of Natural Resources.
- d. Unless otherwise agreed, the State Lands Steward will hold a conference within 15 calendar days of the receipt of Contractor's request for review of the Region Manager's written decision. Contractor and the Region Manager will have an opportunity to present their positions. The State Lands Steward will issue a decision within a reasonable time of being presented with both Parties' positions.

G-251 Compliance with All Laws

Contractor shall comply with all applicable statutes, regulations and laws, including, but not limited to, all Department of Labor and Industry laws. Contractor shall provide documentation from Washington State Departments of Labor and Industries and Revenue that all obligations concerning worker compensation and safety will be met. Failure to comply may result in forfeiture of this contract.

G-260 Venue

The laws of the State of Washington shall govern this contract. In the event of a lawsuit involving this contract, venue shall be proper only in Thurston County Superior Court.

G-270 Equipment Left on State Land

All equipment owned or in the possession of Contractor, its employees, agents, or invitees, including independent contractors, shall be removed from the sale area and other State land by the termination date of this contract. Equipment remaining unclaimed on State land 30 days after the expiration of the contract period is subject to disposition as provided by law. Contractor shall pay to the State all costs of moving, storing, and disposing of such equipment. The State shall not be responsible for any damages to or loss of the equipment or damage caused by the moving, storing or disposal of the equipment.

G-280 Operating Release

An operating release is a written document, signed by the State and the Contractor, indicating that the Contractor has been relieved of certain rights or responsibilities with regard to the entire or a portion of the timber sales contract. Contractor and State may agree to an operating release for this sale, or portion of this sale, prior to the contract expiration, when all contract requirements pertaining to the release area have been

satisfactorily completed. Upon issuance of a release, Contractor's right to cut and remove forest products on the released area will terminate.

G-310 Road Use

The Contractor is authorized to use the following State roads, and roads for which the State has acquired easements and road use permits; 24 Road, 2420 Road, [1000 Road](#), [1020 Road and Spurs 1 and 2](#). The State may authorize in writing the use of other roads subject to fees, restrictions, and prior rights.

G-330 Pre-work Conference

Contractor shall arrange with the Contract Administrator to review this contract and to examine the sale area before beginning any operations. A plan of operations shall be developed and agreed upon by the Contract Administrator and Contractor before beginning any operations. To the extent that the plan of operations is inconsistent with the contract, the terms of the contract shall prevail. State's acceptance and approval of Contractor's plan of operations shall not be construed as any statement or warranty that the plan of operations is adequate for Contractor's purposes or complies with applicable laws.

G-340 Surveys and Markers Preservation

Any legal land subdivision survey corners and witness objects are to be preserved. If such are destroyed or disturbed, the Contractor shall, at the Contractor's own expense, re-establish them through a licensed land surveyor in accordance with U.S. General Land Office standards. Corners and/or witness objects that must be disturbed or destroyed in the process of road construction or logging shall be adequately referenced and/or replaced in accordance with RCW 58.24.040(8). Such references must be approved by the Contract Administrator prior to removal of said corners and/or witness objects.

G-370 Blocking Roads

Contractor shall not block the [1000](#) or 1020 Road(s), unless authority is granted in writing by the Contract Administrator.

G-381 Road Easement and Road Use Permit Requirements

The State grants Contractor the right to operate under the following rights of way:

Road Use Permit No. 55-082098 entered into between the State of Washington and Green Crow Corporation, dated May 8, 2008.

Easement No. 55-051180 entered into between the State of Washington and Peninsula Plywood Corporation, dated July 25, 1958.

G-430 Open Fires

The Contractor its employees or its subcontractors shall not set or allow to be set any open fire at any time of the year without first obtaining permission in writing from the Contract Administrator.

G-450 Encumbrances

This contract and Harvester's activities are subject to the following:

Right of Way, including the terms and provisions thereof, for: Exchange Road In Favor of: MRGC Timberland L.P., as disclosed by Application No.: 50-054064
Date Granted: 10/19/1994 Expires: Indefinite

Section P: Payments and Securities

P-026 Payment For Harvesting and Hauling Services

The State shall pay Contractor for harvesting and hauling services at the following rates:

Payment for Harvesting Stump to Truck: \$/ton (*to be determined from successful Harvesters bid*) for merchantable sorts and **\$9.00**/ ton for utility sorts. An additional \$5.00 / ton to harvesters bid rate per ton for harvesting poles.

Payment Rates for Hauling: Haul rates will be determined using the 'haul miles' listed in clause G-022 in the following formula:

Payment = Base Rate + Mileage Rate

Base Rate = \$2.63 per ton

Mileage Rate = (\$0.16 per ton per C mile) + (\$/ton per A mile (*to be determined January 1, 2009*))

Travel distances and road classification miles to each log sort destination will be determined by the State and represents the one-way travel distance from the sale area to the purchaser's delivery point.

Payment Rates for Hauling Poles: An additional \$1.00/ ton for each load will be added to the haul base rate for poles.

Payment for Hauling Across Washington State Ferries or the Narrows Bridge: Ferry or bridge tolls approved by the Contract Administrator shall be reimbursed by the State as described below.

Prior approval by the State is required for payment of any additional transportation charges, including **round trip** tolls, incurred by Contractor. There will be no contract payment adjustments for fuel price fluctuations.

The state shall approve all haul routes and determine travel distances prior to contractor delivery of logs to specified destinations. The State may determine alternate haul routes and delivery destinations during the course of this contract. Upon notification by the State, the Contractor is required to deliver logs: using the alternative route, or to State approved alternative delivery locations. Payment rates for approved alternate routes and delivery destinations shall be as set forth in this clause.

The Contractor is responsible for billing the State for harvesting and hauling services performed using load data collected by State approved third party scaling organizations and reported by the State designated Log and Load Reporting Service. The billing statement shall include itemized accounts and summaries of harvesting tonnage and hauling mileage charges in a format approved by the State.

If the Contract Administrator authorizes hauling across Washington State ferries, the Contractor's billing statement must also include Washington State Ferry toll receipts from each crossing. Contractor shall only be reimbursed for the total amount of Washington State ferry toll receipts provided to and approved by the Contract Administrator. Payment for tolls incurred for backhauling loaded trucks shall be the responsibility of the Contractor and will not be reimbursed by the State.

If the Contract Administrator authorizes hauling across the Narrows Bridge on Highway 16, the Contractor's billing statement must also include toll receipts from each crossing. Contractor shall only be reimbursed for the total amount of toll receipts provided to and approved by the Contract Administrator.

The billing schedule shall be the 1st and the 15th of each month with payment due by State within fourteen (14) days. Reporting periods end on the 14th and the end of each month.

No certificate given or payment made shall be evidence of the satisfactory performance of the Contract, either wholly or in part, against the claim of the State to the contrary, and no payment shall be construed to be an acceptance of any defective work, which may before or afterwards appear.

P-027 Payment For Road Construction

The State shall pay Contractor for roadwork completed at the following rates:

Roads or Structures	Number of Stations	Construction cost per station	Abandonment cost per station	Total Cost
1020	28.42	1,517	-----	43,113
1020	11.22	-----	\$72	\$808
Spur 1	26.52	1,517	\$72	42,140
Spur 2	10.82	1,515	\$70	17,193

One station of road construction is 100 feet. All materials, equipment time, labor, and equipment mobilization costs are included in the total price.

Upon completion of road construction, the Contractor shall submit a report identifying the road(s), and the number of stations which have been completed to the Contract Administrator. Once the Contract Administrator has approved the roadwork in writing, the Contractor is responsible for billing the State for road construction services performed. The billing statement shall include an itemized account of the road(s), the number of stations and which stations have been completed. The Contractor Administrator will verify that road construction described on the billing statement is complete prior to State making payment to Contractor. The billing schedule shall be the 1st and the 15th of each month with payment due by State within fourteen (14) days. Reporting periods end on the 14th and the end of each month.

No certificate given or payment made shall be evidence of the satisfactory performance of the Contract, either wholly or in part, against the claim of the State to the contrary, and no payment shall be construed to be an acceptance of any defective work, which may before or afterwards appear.

P-091 Performance Security

As a guarantee of the performance of the provisions of this contract, including all damages accrued to the State by reasons of the operations under this contract and Contractor's failure to perform, the Contractor agrees to deliver herewith one or more State approved performance securities (cash, savings account assignment, certificate of deposit assignment, irrevocable standby letter of credit, or a Miller Act bond) prior to start of any operations for \$ 50,000.00; however, at least 50% must be in a form other than a bond, unless otherwise agreed to by the State. The performance security held by the State shall guarantee the performance of all obligations of the Contractor under the Harvesting Services Contract. In addition, said security may be used by the State to satisfy any claims or liens made by Contractor's subcontractors, material providers, or other individuals against the State or its Purchasers, which arise from this Harvesting Services Contract.

If at any time the State decides that this security has become unsatisfactory, the Contractor agrees to suspend operations and, within fifteen (15) days of notification, to replace the security with one acceptable to the State. The State may also require increases to the existing performance security at any time.

P-100 Performance Security Reduction

The State may reduce the performance security if it determines that adequate security exists for any remaining obligations of Contractor. Prior to any reduction of the performance security amount, the Contractor shall make a written reduction request that explains why the Contractor believes the additional security is unnecessary. No reduction will be allowed by the State unless such reduction can be made while fully protecting the State's interests.

Section L: Log Definitions and Accountability

L-010 Merchantable Forest Products

Merchantable forest products are logs or parts of logs as defined by the requirements for the lowest sawmill grade of the standard log scaling rules applicable to this contract. Logs or parts of logs not meeting merchantable forest products minimum requirements are considered utility logs. Logs that do not meet minimum utility specifications are considered cull logs.

Non-merchantable logs are logs not meeting the minimum merchantability requirements of the scaling rules as designated for this harvesting contract.

L-013 Log Sorts Delivered to Incorrect Destination

Each Purchaser has only agreed to purchase the log sort (s) described in the G-022 clause. In the event a load of logs from a sort not meeting the log sort is mis-delivered to Purchaser, Purchaser may reject the load. If Purchaser receives a mis-delivered load, Contractor shall notify the State within 24 hours. The Contractor will maintain responsibility for proper disposition and delivery of such load of logs.

L-060 Log Load Tickets

Contractor shall complete and use load tickets as directed by the Contract Administrator and, if required, use other identification as directed by the State to ensure accounting of forest products removed from the sale area. A load ticket must be fixed, as designated by the Contract Administrator, to each truck and trailer load prior to leaving the landing.

Contractor shall account for all load tickets issued by the Contract Administrator. The State may treat load tickets not accounted for as lost forest products. All costs associated with computing the billings for lost loads shall be borne by Contractor.

L-080 West Side Scaling Rules

Determination of volume and grade of any forest products shall be made in accordance with the official log scaling and grading rules developed by the Northwest Log Rules Advisory Group that are in effect on the date of confirmation of this contract unless otherwise stated.

L-110 State Approval of Log Scaling and Weighing Locations

Measurement and weighing facilities required by this contract must be approved by the State. Forest products sold shall be scaled, measured, or counted by a State approved third party log scaling organization.

Prior to logs being hauled, the Contract Administrator must authorize in writing the use of State approved measurement and weighing facilities that are at or en route to final destinations. Logs from this sale shall be measured and weighed at facilities, which are currently approved for use by the State and are currently authorized for this sale. The

State reserves the right to verify load volume and weights with State contractors or employees, State scalers and equipment at the State's own expense. The State reserves the right to revoke the authorization of previously approved measurement locations.

L-114 State Approval of Haul Route

The Contractor shall file with the Contract Administrator and Contract Administrator shall approve a map showing the haul route, which unscaled and unweighed logs will travel from the harvest area to the weighing/scaling location and approved destinations. The Contractor must notify Contract Administrator within 24 hours of any deviation from the haul route. The route of haul may be changed by prior agreement of the State and the Contractor. The Contract administrator must be notified by the Contractor of any overnight stays of an unscaled or unweighed load of logs.

Section H: Harvesting Operations

H-013 Reserve Tree Damage Definition

Reserve Trees are trees required and designated for retention within the sale boundary. Contractor shall protect Reserve Trees from being cut, damaged, or removed during operations. Reserve Tree damage exists when one or more of the following criteria are satisfied as a result of Contractor's operation:

- a. A reserve tree has one or more scars on its trunk exposing the cambium layer, which in total exceeds 75 square inches.
- b. A reserve tree's top is broken or the live crown ratio is reduced below 30 percent.
- c. A reserve tree has more than 1/3 of the circumference of its root system injured such that the cambium layer is exposed.

Removal of designated Reserve Trees from the sale area is unauthorized, and may invoke the use of the G-230, Trespass and Unauthorized Activity, clause. Contractor is required to leave all cut or damaged Reserve Trees on site.

H-014 Skid Trail Damage and Repair

A skid trail is defined as an area that is used to skid logs for more than three passes by any equipment.

- a. Excessive skid trail damage is not permitted. Skid trail damage is considered excessive when ruts exceed 12 inches in depth.
- b. Skid trails shall be water barred at the time of completion of yarding, as determined by the Contract Administrator.
- c. Berms along skid trails shall be knocked down to reduce drainage problems as determined by the Contract Administrator.

H-030 Timber Falling

Trees shall be felled and logs shall be bucked to obtain the greatest practicable utilization of merchantable forest products.

H-035 Fall Trees Into Sale Area

Trees shall be felled into the sale area unless otherwise approved by the Contract Administrator.

H-053 Branding and Painting

The State shall provide a State of Washington registered log brand. Contractor must brand and paint all logs removed from the harvest area in a manner that meets the requirements of WAC 240-15-030(2)(a)(i). All logs removed from the harvest area designated as export restricted shall also be painted in a manner that meets the requirements of WAC 240-15-030(2)(a)(ii).

In addition, Contractor shall brand at both ends 20 percent of all logs less than 10 inches in diameter. Also, 20 percent of all logs less than 10 inches in diameter removed from the harvest area designated as export restricted shall be painted at both ends with durable red paint.

H-110 Stump Height

Trees shall be cut as close to the ground as practicable. Stump height shall not exceed 12 inches in height measured on the uphill side, or 2 inches above the root collar, whichever is higher.

H-121 Harvesting Equipment and Methods

Forest products harvested under this contract shall be removed using ground based equipment, unless the authorized use of other methods or equipment is granted in writing by the State.

H-140 Special Harvest Requirements**Contractor shall accomplish the following during the harvest operations:**

- a. The Contractor shall leave 2 down logs per acre. A log is defined as having a minimum diameter of 12 inches on the small end of the log and a minimum length of 20 feet. This log size is defined as having a minimum volume of 100 board feet.
- b. Existing downed logs shall not be removed, except that blow down that has been on the ground less than 3 years can be removed.
- c. Buckskin logs shall not be removed.

- d. Old growth and snags that have been felled for safety reasons shall not be removed.
- e. The Contractor shall fully suspend one end of logs during logging operations.
- f. Ground based yarding may be restricted during wet weather conditions if excessive rutting occurs in the opinion of the Contract Administrator.
- g. The Contractor shall reduce or relocate landing debris and piles less than 20 feet in diameter. The landing debris relocation plan shall be approved by the Contract Administrator.
- h. Type 5 streams have 30 foot wide equipment limitation zones on each side. No equipment will be allowed within 30 feet except at approved designated crossings.
- i. Harvesting operations on weekends or holidays require written approval by the Contract Administrator.
- j. The Contractor shall notify all employees and contractors working on this sale that any danger tree marked or unmarked may be felled. Any marked danger tree will be replaced with a suitable tree of similar size and species as approved by the Contract Administrator.
- k. The Contractor shall cut, process and deck all right of way wood, at tree length down to a 2 inch top, during road construction between stations 0+00 and 17+20 on the 1020 Road. Decks shall be in locations approved by the Contract Administrator.

Permission to do otherwise must be granted in writing by the Contract Administrator.

H-151 Required Removal of Forest Products

Contractor shall remove from the sale area, present for scaling and deliver to the designated purchaser locations specified in the G-022 clause all merchantable forest products that meet the following minimum dimensions unless directed otherwise by the Contract Administrator:

Species	Net bd ft	Log length (ft)	Log dib
All except DF/WH	10	12	5"
DF/WH	20	16	5"-7"
DF/WH	20	12	8"
All -Utility		12	2"

The State may treat failure to remove forest products left in the sale area that meet the above specifications as a breach of this contract. The Contractor shall be responsible for forest products not removed. At the State's option, the State or a third party scaling organization may scale forest products, for volume, that meet the above specifications

and are left in the sale area. State may deduct the value of forest products not removed from payments to the Contractor for harvesting services rendered. All costs associated with scaling and computing the billing for forest products left in the sale area will be borne by Contractor.

H-161 Excessive Timber Breakage

The Contractor shall be responsible for felling and yarding timber in a manner that shall minimize breakage and maintain stump heights within contract specifications, unless permission to do otherwise is agreed to by the Contract Administrator.

The State may treat excessive timber breakage, as determined by the Contract Administrator as a breach of this contract. At the State's option, the State or a third party scaling organization may scale forest products, for volume. State may deduct the value of forest products damaged through excessive breakage from payments to the Contractor for harvesting services rendered. All costs associated with scaling and computing the billing for forest products damaged through excessive breakage will be borne by Contractor.

H-190 Completion of Settings

Operations begun on any setting of the sale area shall be completed before any operation begins on subsequent settings unless authorized in writing by the Contract Administrator.

H-230 Tops and Limbs Outside the Sale Boundary

Tops and limbs outside the sale boundary as a result of Contractor's operation shall be removed concurrently with the yarding operation unless otherwise directed by the Contract Administrator.

Section C: Construction and Maintenance

C-040 Road Plan

Road construction and associated work provisions of the road plan for the [Preacher Sorts](#) Timber Sale, dated [February 4, 2008](#), are hereby made a part of this contract. The Department may make modifications to the Road Plan made necessary by unforeseen conditions. Any modifications that create additional work for the Contractor shall be paid in accordance with the rates set forth in the equipment rate schedule on file at the Region office or Engineering Division in Olympia.

C-051 Maintenance and Repair

Contractor shall perform, at their own cost, maintenance and repair on the [the 1020](#) Road, and Spurs 1 and 2 to prevent damage to the subgrade, to maintain proper drainage, and to keep the road surface smooth and crowned.

C-061 Designated Road Maintainer

If required by the State, the Contractor shall perform maintenance and replacement work as directed by the State on the 1000 Road, 24 Road and 2420 Road. The Contractor shall furnish a statement, in a form satisfactory to the State showing the costs incurred while performing this work. Costs shall be based on the rates set forth in the equipment rate schedule on file at the Region office or Engineering Division in Olympia. The State shall reimburse the Contractor for said costs within thirty (30) days of receipt and approval of the statement.

C-081 Landing Location Approval

Landing locations shall be marked by the Contractor and approved by the Contract Administrator prior to construction.

C-090 Landing Location

Landings for shall be built at least 75 feet off the 1000 Road.

Section S: Site Preparation and Protection**S-010 Fire Hazardous Conditions**

Contractor agrees to use its best efforts to minimize the risk of fire.

S-050 Cessation of Operations for Low Humidity

During the “closed season” when the humidity is 30 percent or lower on the sale area, all operations must cease unless prior authority to continue is granted in writing by the State.

S-060 Pump Truck or Pump Trailer

The Contractor shall provide a fully functional pump truck or pump trailer equipped to meet the specifications of WAC 332-24-005 and WAC 332-24-405 during the “closed season” or as extended by the State and shall provide trained personnel to operate this equipment on the sale area during all operating periods.

S-100 Stream Cleanout

Slash or debris which enters any stream as a result of operations under this contract and which is identified by the Contract Administrator shall be removed and deposited in a stable position. Removal of slash or debris shall be accomplished in a manner that avoids damage to the natural streambed and bank vegetation.

S-110 Resource Protection

No equipment may operate within the painted clumps or tagged WMZ’s or RMZs?,

unless authority to do so is granted in writing by the Contract Administrator.

S-120 Stream Protection

No timber shall be felled into, across or yarded through RMZ's or any stream, except at designated Type 5 stream crossings. Designated crossings may be allowed on dry Type 5 streams but will require prior notification and approval from the contract administrator. Designated crossings will require bank and channel protection and cleanout. Except at approved designated crossings Type 5 stream will be protected with a 30 foot equipment limitation zone on each side. No equipment will be allowed within 30 feet of stream channel.

S-130 Hazardous Materials

a. Hazardous Materials and Waste - Regulatory Compliance

Contractor is responsible for understanding and complying with all applicable local, state, and federal hazardous material/waste laws and regulations for operations conducted under this contract. Such regulations pertain to, but may not be limited to, hazardous material storage, handling and transport, personnel protection, release notification and emergency response, cleanup and waste disposal. Contractor shall be responsible for restoring the site in the event of a spill.

b. Hazardous Materials Spill Prevention

All operations shall be conducted in a manner that avoids the release of hazardous materials, including petroleum products, into the environment (water, air or land).

c. Hazardous Material Spill Containment, Control and Cleanup

If safe to do so, Contractor shall take immediate action to contain and control all hazardous material spills. Contractor shall ensure that a spill kit is on site. At a minimum, a quick response kit capable of absorbing 4 to 6 gallons of oil, coolant, solvent or contaminated water shall be available on site. If large quantities of bulk fuel/other hazardous materials are stored on site, Contractor must be able to effectively control a container leak and contain & recover a hazmat spill equal to the largest single on site storage container volume. (HAZWOPER reg. 29CFR 1910.120 (j) (1) (vii)).

d. Hazardous Material Release Reporting

Releases of oil or hazardous materials to the environment must be reported according to the State Department of Ecology. It is the responsibility of the Contractor to have all emergency contact information readily available and a means of remote communication for purposes of quick notification. In the event of a spill, the Contractor is responsible for notifying the following:

Appropriate Department of Ecology regional office (contact information below).
DNR Contract Administrator

DOE - Northwest Region:
1-425-649-7000

(Island, King, Kitsap, San Juan, Skagit, Snohomish, and Whatcom counties)

DOE - Southwest Region:

1-360-407-6300

(Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Mason, Lewis, Pacific, Pierce, Skamania, Thurston, and Wahkiakum counties)

DOE - Central Region:

1-509-575-2490

(Benton, Chelan, Douglas, Kittitas, Klickitat, Okanogan, and Yakima counties)

DOE - Eastern Region:

1-509-329-3400

(Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, and Whitman counties)

S-131 Refuse Disposal

As required by RCW 70.93, All Contractor generated refuse shall be removed from state lands for proper disposal prior to termination of this contract. No refuse shall be burned, buried or abandoned on state forest lands. All refuse shall be transported in a manner such that it is in compliance with RCW 70.93 and all loads or loose materials shall be covered/secured such that these waste materials are properly contained during transport.

Section D: Damages

D-011 Liquidated Damages

The following clauses in the DAMAGES section of this contract provide for the State's payments to the Contractor to be reduced for certain breaches of the terms of this contract. These offsets are agreed to as liquidated damages for the Contractor's breach, and are not penalties. They are reasonable estimates of anticipated harm to the State caused by the Contractor's breach. The State and Contractor agree to these liquidated damages provisions with the understanding of the difficulty of proving loss and the inconvenience or infeasibility of obtaining an adequate remedy. These liquidated damages provisions provide greater certainty for the Contractor by allowing the Contractor to better assess its responsibilities under the contract.

D-015 Damages for Delivered Mis-sorted Logs

Logs delivered by Contractor that do not meet the receiving Purchaser's log sort and merchantable specifications as described in clause G-022, where species are mixed, or are over 1" out of tolerance of scaling diameter, and logs not meeting the minimum merchantability requirements as designated for this contract, are considered mis-sorts.

Mis-sorted log volume will be considered on a per load basis. When mis-sorts amount to more than 5% of a load's total volume, as determined by a third party scaling

organization, the State is harmed and an adjustment to the Contractor's harvesting payment shall be made. For the improper delivery of mis-sorted logs, the State shall reduce the harvesting payment by \$100.00 for each load delivered which contained mis-sorted volume in excess of 5%, as documented by third party scaling ticket.

D-016 Damages for Delivered Mis-manufactured Logs

Logs delivered by Contractor that do not meet the receiving Purchaser's preferred log length specifications as described in clause G-022, and logs not meeting minimum log quality specifications for sweep, peeler sorts, untrimmed limbs and knots, and blue stain as described in the G-024 clause are considered mis-manufactured logs.

Mis-manufactured log volume will be considered on a per load basis. When mis-manufactured logs amount to more than 5% of a loads total volume, as determined by a third party scaling organization, the State is harmed and an adjustment to the harvesting payment shall be made. For the delivery of mis-manufactured logs, the State shall reduce the harvesting payment due to the Contractor by an amount of \$100.00 for each load delivered which has been determined to contain mis-manufactured volume in excess of 5% as documented by third party scaling ticket.

D-023 Damages for Failure to Remove Forest Products

The Contractor's failure to remove all of the forest products specified prior to the expiration of the contract operating authority results in substantial injury to the State. The value of the forest products sold at the time of breach is not readily ascertainable. The Contractor's failure to perform disrupts the State's management plans in the project area, the actual cost of which is difficult to assess. A re-offering of the contract involves additional time and expense and is not an adequate remedy. Therefore, the Contractor agrees to accept a reduction of the amount due for harvesting services from the State in the amount calculated according to the following guidelines:

- a. Full stumpage value will be assessed for felled trees, individual or scattered standing trees, or clumps of standing trees less than three acres in size, plus all costs associated with scaling and computing the stumpage value of the forest products left.
- b. 35% of full stumpage value will be assessed for clumps of standing trees greater than three acres in size, plus all costs associated with scaling and computing the stumpage value of the forest products left.

The stumpage value of forest products left shall be determined by the State or a third party scaling organization utilizing whatever method(s) best suited for accurate volume and acreage measurement as determined by the State.

D-024 Damages for Excessive Timber Breakage

Excessive breakage of timber results in substantial injury to the State. The value of the forest products sold at the time of breach is not readily ascertainable. Therefore, the

Contractor agrees to accept a reduction of the amount due for harvesting services from the State at an amount calculated according to the following:

The value for excessive timber breakage will be determined at a rate, which reflects the log sort price that the Purchasers would have paid for unbroken logs minus the cost of delivery, plus all costs associated with scaling and computing the stumpage value of the forest products excessively broken.

The stumpage value of forest products excessively broken shall be determined by the State or a third party scaling organization utilizing whatever method(s) best suited for accurate volume measurement as determined by the State.

D-034 Inadequate Log Accountability

Removal of forest products from the sale area without adequate branding and/or valid load tickets attached to the load, weighing or scaling forest products in a location other than the facilities authorized for use for this sale, and failing to deliver load ticket to the weighing/scaling official all result in substantial injury to the State. The potential loss from not having proper branding, ticketing, weighing locations and accountability is not readily ascertainable. These contractual breaches result in a loss of load and weighing/scaling data the potential for the removal of forest products for which the State receives no payment, and cause increases in the State's administration costs associated with this contract. The actual costs of these breaches are difficult to assess.

For these reasons, Contractor's payments for harvesting under this contract will be reduced in the following amounts, as liquidated damages, to compensate the State for these breaches: a sum of \$100.00 each time a load of logs does not have branding as required in the contract, \$250.00 each time a load of logs does not have a load ticket as required by the contract, \$250.00 each time a load ticket has not been filled out as required by the plan of operations, \$250.00 each time a load is weighed at a facility not approved as required by the contract, and \$250.00 each time load and weight scale data is not presented to the weighing/scaling official.

D-041 Reserve Tree Damage

Contractor shall exercise due care and caution at all times to avoid damaging residual timber. If in the course of Contractor's operations, the Contract Administrator determines that a reserve tree has been cut, damaged, or removed, the Contract Administrator shall designate a replacement reserve tree of like condition, size, and species within the sale area to satisfy reserve tree requirements.

When Contractor operations exceed the damage limits set forth in this contract, and when the Contract Administrator determines that a suitable replacement for a damaged reserve tree is not possible, the damaged trees result in substantial injury to the State. The value of the damaged reserve trees at the time of the breach is not readily ascertainable. Therefore, the Contractor agrees to pay the State as liquidated damages at the rate of \$1,000.00 per tree for all damaged reserve trees that are not replaced.

IN WITNESS WHEREOF, the Parties hereto have entered into this contract. The State agrees to pay for and the Contractor agrees to provide timber harvesting, road construction, weighing and/or scaling, and hauling services as specified under the terms of this Harvesting Services Contract.

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

[Contractor Name here]
Contractor

Randy Acker
South Puget Sound Region Manager

Date: _____

Date: _____

Address:
[Contractor Address here]

CORPORATE ACKNOWLEDGEMENT

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, 20____, before me personally
appeared _____

_____ to me known to be the
_____ of the corporation
that executed the within and foregoing instrument and acknowledged said instrument to be the
free and voluntary act and deed of the corporation, for the uses and purposes therein mentioned,
and on oath stated that (he/she was) (they were) authorized to execute said instrument and that
the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and
year first above written.

Notary Public in and for the State of

My appointment expires _____

SCHEDULE A

SHOVEL LOGGING SPECIFICATIONS

- A. Only low ground pressure (9 PSI) track mounted machines with hydraulic boom and grapple will be allowed.
- B. Shovel must be large enough to pick up one end of the largest log 35 feet from the machine.
- C. Shovel skid roads shall be a minimum of 70 feet apart unless approved in writing by the Contract Administrator.
- D. Shovel operations shall be suspended during periods of wet weather when rutting of shovel roads is considered excessive by the contract administrator.
- E. Logging debris created from operations shall be removed from all Type 5 stream channels concurrently with yarding.
- F. Shovel logging will not be permitted on slopes over 35 percent unless permission is granted in writing by the Contract Administrator.

SCHEDULE M

Additional Road Maintenance Payment Rates

(Hourly Rate including Operator)

Equipment	Hourly rate
<u>Motor Grader</u>	
To 125 Flywheel H.P. (Cat 112,120,12&12E Class)	\$ 65.00
To 140 Flywheel H.P. (Cat 12F & 12G Class)	\$ 75.00
To 175 Flywheel H.P. (Cat 14E Class)	\$ 85.00
Over 175 Flywheel H.P. (Cat 14G Class)	\$ 95.00
Addition for ripper/scarifier use: To 140 h.p.	add \$ 3.40/hr,
over 140 h.p	add \$5.25 / hr
<u>Front End Loaders And Loader/Backhoe Combinations</u>	
To 75 Flywheel H.P. (Cat 910, Ford 555 Class)	\$ 55.00
To 110 Flywheel H.P. (Cat 930, Case 1150 Class)	\$ 65.00
To 160 Flywheel H.P. (Cat 955, Case 1450 Class)	\$ 80.00
Over 160 Flywheel H.P. (Cat 966-977)	\$ 100.00
Addition for special backhoe attachment use: compactor, clam, extendaboom, etc.	add \$ 6.00/hr.
<u>Gravel Trucks</u>	
Dual Rear Axle	\$ 75.00
5-axle Combination End Dump & End Dump Trailer	\$ 85.00
5-axle Tractor & Belly Dump Trailer	\$ 85.00
<u>Dozers</u>	
To 75 Flywheel H.P. (Cat D3 Class)	\$ 60.00
To 105 Flywheel H.P. (Cat D4 Class)	\$ 70.00
To 135 Flywheel H.P. (Cat D5 Class)	\$ 90.00
To 180 Flywheel H.P. (Cat D6 Class)	\$105.00
To 235 Flywheel H.P. (Cat D7 Class)	\$120.00
Over 235 Flywheel H.P. (Cat D8 Class)	\$145.00
Addition for Ripper use: (Cat D6 Class) add	\$ 6.25
(Cat D7 Class) add	\$ 10.50
(Cat D8 Class) add	\$ 15.50

Excavators and Shovels

To 95 Flywheel H.P. (Cat 312 Class , JD 490)	\$ 85.00
To 120 Flywheel H.P. (Cat 315 Class , JD 590)	\$ 95.00
To 140 Flywheel H.P. (Cat 320 Class , JD 690)	\$ 110.00
To 170 Flywheel H.P. (Cat 325 Class , JD 790)	\$ 130.00
To 230 Flywheel H.P. (Cat 330 Class , Kob. SK300)	\$ 150.00
To 290 Flywheel H.P. (Cat 350 Class , JD 890)	\$ 170.00
Over 290 Flywheel H.P. (Cat 245 Class , Kob. SK400)	\$190.00

Self-Propelled Vibratory Compactors

To 79 Flywheel H.P. (Ing.-Rand. SP42)	\$ 55.00
To 125 Flywheel H.P. (Hyster C610, Tampo RS28)	\$ 70.00
Over 125 Flywheel H.p. (Cat. CS-563 Class)	\$ 90.00

Tractor Brush Cutters

Excavator Attachment Add to Excavator	\$ 20.00
To 67 PTO H.P. (Ford 5600 Class, JD 6200)	\$ 60.00
To 80 PTO H.P. (Ford 6600 Class, JD 6300)	\$ 75.00
Over 80 PTO H.P. (Ford 7710 Class, JD 6400)	\$ 90.00

Track Mounted Rock Drills (Includes Compressor)

To 3.5 Diameter Hole (does not include Laborer)	\$ 170.00
Over 3.5" Diameter Hole	\$ 200.00

Heavy Equipment Hauling

Truck and Tilt Trailer	\$ 100.00
Tractor and Lowbed Trailer, To 55,000 # payload	\$ 105.00
Tractor and Lowbed Trailer, over 55,000 # payload	\$ 125.00

Water Trucks

4000 gallons and over	\$ 80.00
3,000 – 3999 gallons	\$ 70.00
Under 3,000 gallons	\$ 60.00

Power Saws and Pumps \$ 3.50

Labor Wages (Woods Rate before loading) \$ 19.25

Materials Reimbursement

In the event that a Contractor is required to purchase materials to complete the additional road maintenance projects as directed by the Contract Administrator, the Contractor shall be reimbursed at the exact cost, plus applicable tax, upon submittal of the paid invoice for the item(s).